

## NEWPORT NEWS REGIONAL LIVE FIRE TRAINING FACILITY

### MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT dated this 1<sup>st</sup> day of February, 2000, by and among the CITY OF NEWPORT NEWS, CITY OF HAMPTON, COUNTY OF JAMES CITY, CITY OF POQUOSON, CITY OF WILLIAMSBURG, COUNTY OF YORK and U.S. ARMY TRANSPORTATION CENTER; all of the Commonwealth of Virginia and United States of America, and hereinafter collectively referred to as "Partners".

WHEREAS, Partners have agreed in principle to jointly construct and operate a regional live fire training facility, hereinafter referred to as "Facility", with Newport News serving as the host *jurisdiction for the facility; and*

WHEREAS, Partners have budgeted capital funds necessary to develop and maintain the Facility; and

WHEREAS, the Commonwealth of Virginia has agreed to provide additional capital funds necessary for the construction of the Facility conditioned upon the Partners executing a regional agreement for the operation and maintenance of the Facility.

NOW, THEREFORE, it is hereby agreed by and among the Partners as follows:

#### 1. DEFINITIONS

*Additional Partners* shall mean entities that are not included in the list of partners as provided in this agreement dated the 1<sup>st</sup> day of February, 2000, but which are accepted as Partners subsequent to the execution of this Agreement.

*Agents* means and includes authorized officers, employees and agents of a Partner.

*Agreement* shall mean this Memorandum of Agreement, as amended from time to time.

*Committee* shall mean the committee established pursuant to Section 5 of this Agreement.

*Facility* shall mean the regional Live Fire Training Facility.

*Partner* shall mean any one of the Partners or Additional Partners.

*Partners* shall be a collective term meaning the jurisdictions of the City of Newport News, City of Hampton, County of James City, City of Poquoson, City of Williamsburg, County of York, Virginia; and the U.S. Army Transportation Center at Fort Eustis, Virginia; and all Additional Partners, if any.

*Regional Live Fire Training Facility and Facility* shall mean land, designated roadways leading immediately thereto, utilities, burn building, and any other physical structures and facilities located on property designated for and used by the Partners for the purpose of operating a regional live fire training facility.

## **2. PURPOSE**

The purpose of this agreement is to construct, operate and maintain a facility by and among the Partners hereto that will provide a live fire training facility for the Partner's fire fighting personnel.

## **3. DURATION**

A. The initial term of this agreement shall be 15 years commencing on the date of the organizational meeting. At the expiration of the initial 15 year term, this Agreement may be renewed based on the approval of and for a term determined by a majority of the then active Partners.

B. This agreement is additionally subject to the continued financial support of the Partners and thus subject to continued appropriation by the Partners of funds necessary for the construction and operation of the Facility.

## **4. THE FACILITY**

A. The initial Facility improvements shall include the following: a one story training building with an attached one story commercial space, the overall dimensions of which will be approximately 46' x 26'. The site will be provided with storm water management, and served by water, access roads, required parking and other paved areas necessary for the training facility.

B. The construction, maintenance and operation of, and improvements to the Facility will comply with all state and federal laws, rules and regulations under the direction of the Committee, the City of Newport News, Virginia, and the terms of the grant agreement between the Department of Fire Programs and the City of Newport News, Virginia, for the construction and operation of the Facility. The Newport News Purchasing Department will handle the procurement of all services, materials and supplies for the construction, maintenance and operation, and improvements to the Facility upon written direction of the Committee.

C. The Newport News Finance Department will process all invoices for payment for construction activities, materials and supplies. Newport News will bill each Partner annually during the month of October for operation and maintenance costs, if any, based on each Partner's use of the

Facility during the preceding fiscal year.

D. From time-to-time during the initial or subsequent terms of this Agreement, the Partners may consider additional capital improvements or additions to the Facility. Any decision to build any additional regional structures to the Facility must first be approved unanimously by the then active Partners.

E. The Facility shall be owned solely by the City of Newport News. No other Partner or other entity shall acquire a property interest in the Facility solely by virtue of participating in this Agreement, or using the facility for training or otherwise.

## 5. THE COMMITTEE

A. The Committee will consist of seven (7) members appointed as follows:

**Chair:** The Chair shall be a member of the Committee who shall have all rights of membership including the right to vote. The Chair shall rotate each calendar year among the Committee members as determined by the Committee. The Chair shall function as the chair of the Committee but shall have no additional powers or authority not available to the other members of the Committee, except as otherwise approved by a majority of all the Committee members.

**Members:** The chief, or other operational equivalent, of each Partner's fire department, including their designees, shall serve as that Partner's member on the Committee.

B. The Committee shall adopt and be governed by bylaws. Such bylaws shall include the following components:

1. Quorum. A quorum shall consist of four (4) members present and voting, however, in order for the Committee to approve any budgetary action, the quorum shall consist of five (5) members present and voting. Proxy voting shall be authorized except that proxy votes may not be used to satisfy the requirement for a quorum.
2. Meeting Schedule. To be held at such time and on such dates as provided in the by-laws, and at such additional times and dates as otherwise determined by the Committee.
3. Notice of Meetings. A notice of every meeting shall be faxed to all members of the Committee no less than five working days prior to the meeting date.

4. Organizational Meeting. The Committee shall hold an organizational meeting after all Partners have executed this Agreement. As each partner executes this Agreement, it shall forward the original of the executed Agreement to the Newport News Fire Chief who shall retain the Agreement until such time as all Agreements are received. Upon receipt of all Agreements, the Newport News Fire Chief shall notify every Partner of the time, date and location of the organizational meeting. Upon the presence of every Partner's representative at the organizational meeting, the Newport News Fire Chief shall call the meeting to order for the purpose of electing a Chair from amongst the representatives. Upon election of the Chair, the first order of business shall be to adopt by-laws for the Committee, however the organizational meeting may be continued from time to time until the by-laws are adopted. Upon adoption of the by-laws, the Committee may entertain any other business it desires to be necessary, at the conclusion of which, the organizational meeting shall be adjourned.
5. Action by Committee. - Upon reaching a quorum, all actions required to be taken or approved by the Committee shall be taken or approved by a majority vote of those present and voting, including proxy votes.

## 6. FACILITY OPERATIONAL CONTROL

A. The use of the Facility shall be under the control, direction and supervision of the Committee with the objective of insuring safe operation of the Facility. Subject to the terms and conditions of this Agreement, the Committee shall establish conditions for use of the Facility as the Committee shall deem necessary in the interest of safety and prudent operational efficiency. This authority may be delegated by the Committee to the City of Newport News.

B. Operational and maintenance costs of the Facility shall be administered by the Committee and borne by the Partners, based on use as provided in section 4(C), which shall provide for such costs in their annual operating budgets, or from funds provided by the Virginia Department of Fire Programs or its successor.

## 7. SPECIFIC PROVISIONS - NEWPORT NEWS

A. Newport News shall make available a portion of 14.9 acres of land at 17300 Warwick Boulevard, Newport News, Virginia, located between Lee Hall Elementary School and the Allegheny Pepsi site for the Facility. Newport News shall retain ownership of the land and improvements throughout the term of this agreement.

B. Newport News shall make all applications on the Committee's behalf related to building permits, zoning and any other permits required for the Facility; and Newport News will, as expeditiously as possible, take all actions necessary to obtain all required zoning, special use and building permits.

C. Newport News shall be the responsible jurisdiction for bidding and procuring an architect and builder of the Facility, as well as all procurement related to the operation and maintenance of the Facility.

D. Newport News shall prepare a draft site plan that provides general dimensions of the Facility, and includes proposed building locations with draft architectural drawings. The final plans for the burn building shall be approved by the Committee.

E. Newport News shall coordinate and insure that utilities, trash removal and routine Facility maintenance is provided for so long as it is a partner to this Agreement.

## **8. MUTUAL OBLIGATIONS**

A. The Partners agree to provide contributions of assets or funds as identified in Appendix A for the construction of the Facility. Additionally, the Partners agree to annually provide funds for the operation, maintenance and non-capital improvements to the Facility, if any are needed, based on their proportional use of the Facility during the preceding fiscal year.

B. The provisions of this agreement are for the sole benefit of the Partners, and no other person or entity shall be entitled to enforcement of any part or parts of this Agreement.

C. Annual operating costs and maintenance of the Facility:

(1) The Committee shall adopt an annual operating and maintenance budget for the Facility and shall submit such budget to the Newport News Fire Chief by December 15 of each year.

(2) The Newport News Fire Chief or his designee will prepare an itemized invoice and forward to the other Partners an annual billing for their pro-rata actual cost of operating and maintaining the Facility during the previous fiscal year as provided in section 4(C). The Partners agree that they will, within 60 days of the invoice, review, approve and forward payment to the Newport News Fire Chief for their pro-rata share of the costs.

## **9. LIABILITIES**

A. In so far as permitted by law, each Partner agrees that, as between the Partners, it shall be responsible for its own agents' acts and omissions within the scope of their duties which cause injury to persons or property directly resulting from their use of the Facility. Nothing herein shall be deemed as a waiver of sovereign immunity or any other defense available to a Partner.

B. Each Partner shall have responsibility for and control over its Agents.

C. This Agreement shall not be construed to impair or affect any sovereign or governmental or official immunities that may otherwise be available to a Partner or its Agents. Any legal liability which may be imposed upon a Partner by a court of competent jurisdiction or by duly authorized settlement of any legal claim against a Partner, shall be the responsibility of and retained by that Partner for the conduct of its own affairs. In the event of a third party liability determination not covered by this paragraph or in the event the Committee is sued or ultimately held liable, the Partners shall share in the proportions set forth in the "POP%" column in appendix A in all costs of defense and in any monetary judgment or settlement of such claim, unless otherwise mutually agreed to by all Partners.

D. Each Partner shall be responsible for worker's compensation liability for their respective Agents who may suffer compensable injuries arising out of their use of or authorized presence at the Facility.

## **10. TERMINATION**

A. Any Partner may terminate its participation in this Agreement by providing 90 days written notice, certified mail return receipt requested, to the chief executive officers of all the other Partners. The City of Newport News shall retain ownership of the Facility and shall have and receive ownership of all personal property and equipment and other assets of the terminating Partner not removed by such Partner prior to termination. The terminating Partner shall execute any quit claim deed, bills of sale or conveyances reasonably requested by the City of Newport News to evidence Newport News's ownership of all such assets.

B. A terminating Partner shall forfeit all interests, property or otherwise, if any, in the facility and its operations, however the terminating Partner shall continue to be liable for any obligation incurred during such time as the terminating Partner was a Partner, specifically including the operating and maintenance costs calculated on the Partner's use of the Facility in the prior fiscal year, as well as any costs provided for in Section 9, Liabilities, of this agreement.

**11. EFFECTIVE DATE**

This agreement shall be effective at such time as all parties hereto have executed same as an original and copies of the original have been provided to all parties hereto.

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**END OF SUBSTANTIVE PROVISIONS - APPENDIX AND SIGNATURE PAGES FOLLOW**

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## Financial Shares by Partner Locality Based on Population

PARTNERS:	POP/SHARE %	*** BASE SHARE	SHORTFALL	TOTAL SHARE
Newport News **	39.8	\$149,266	\$0.00	\$149,266
Hampton *	30.7	91,750	N/A	91,750
York County	12.6	47,262	3,500	50,862
James City County	9.7	36,383	2,770	39,153
Williamsburg	2.6	9,778	752	10,530
Poquoson	2.5	9,383	716	10,099
U.S. Army Transportation Center	1.8	6,798	542	<u>7,340</u>
TOTAL PARTNERS' CONTRIBUTION				\$359,000
STATE DEPARTMENT OF FIRE PROGRAMS				<u>325,000</u>
TOTAL FUNDING				<u><u>\$684,000</u></u>

\* Hampton's fixed share agreed upon because Hampton also uses and contributes to the Langley Air Force Base burn facility.

\*\* Newport News excluded from contributing to shortfall; in lieu thereof, Newport News will contribute all administrative expenses.

\*\*\* Base share includes payment of required stormwater management fees.

## APPENDIX "A"



WITNESSETH the following signatures and seals on behalf of the City of Newport News,  
Virginia, in that behalf having first been duly authorized:

CITY OF NEWPORT NEWS, VIRGINIA

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Edgar E. Maroney  
City Manager

ATTEST:

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Bernice I. Berry  
City Clerk

Prepared/Reviewed:

Approved as to Form:

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Leonard E. Ringler  
Deputy City Attorney

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Stuart E. Katz  
City Attorney

WITNESSETH the following signatures and seals on behalf of the City of Hampton,  
Virginia, in that behalf having first been duly authorized:

CITY OF HAMPTON, VIRGINIA

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George E. Wallace  
City Manager

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Robert Green  
Fire Chief

ATTEST:

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City Clerk

WITNESSETH the following signatures and seals on behalf of the City of Williamsburg,  
Virginia, in that behalf having first been duly authorized:

CITY OF WILLIAMSBURG, VIRGINIA

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Jackson Tuttle  
City Manager

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T. K. Weiler  
Fire Chief

ATTEST:

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City Clerk

WITNESSETH the following signatures and seals on behalf of the City of Poquoson,  
Virginia, in that behalf having first been duly authorized:

CITY OF POQUOSON, VIRGINIA

\_\_\_\_\_  
Charles W. Burgess, Jr.  
City Manager

\_\_\_\_\_  
Carl E. Ward  
Fire Chief

ATTEST:

\_\_\_\_\_  
City Clerk

WITNESSETH the following signatures and seals on behalf of the County of James City,  
Virginia, in that behalf having first been duly authorized:

COUNTY OF JAMES CITY, VIRGINIA

\_\_\_\_\_  
Sanford B. Wanner  
County Administrator

\_\_\_\_\_  
Richard Miller  
Fire Chief

ATTEST:

\_\_\_\_\_  
County Clerk

WITNESSETH the following signatures and seals on behalf of the County of York, Virginia,  
in that behalf having first been duly authorized:

COUNTY OF YORK, VIRGINIA

\_\_\_\_\_  
Daniel M. Stuck  
County Administrator

\_\_\_\_\_  
Stephen P. Kopczynski  
Fire Chief

ATTEST:

\_\_\_\_\_  
County Clerk

WITNESSETH the following signatures and seals on behalf of the U.S. Army Transportation Center, Fort Eustis, Virginia, in that behalf having first been duly authorized:

*U.S. Army Transportation Center*  
Fort Eustis, Virginia

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S. T. Jellie  
Fire Chief

ATTEST:

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